

Appl. No. 10/665,670
Docket No. 9042M
Amdt. dated April 5, 2007
Reply to Office Action mailed on Jan. 17, 2007
Customer No. 27752

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REMARKS

Claims 1-27 are pending in the present application.

The paragraphs beginning at page 13, line 29 and ending on page 14, line 3, have been amended to include the units for the Vaughan Solubility Parameter. Support for this amendment can be found in the article "Solubility, Effects in Product, Package, Penetration and Preservation", C. D. Vaughan, *Cosmetics and Toiletries*, Vol. 103, p 47-69, Oct. 1988, incorporated by reference within the specification. A copy of the article has been enclosed with this amendment.

Claims 1-19 have been amended to recite a personal cleansing article that comprises a package containing striped personal cleansing composition. Support for the amendment is found at page 3, lines 14-16; page 23, lines 29-33, page 27, lines 19-21, page 28, lines 14-17 and page 29, lines 24-26 of the specification. Claims 1 and 2 have been amended to recite that the striped personal cleansing composition is in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof. Support for the amendment can be found on page 4, lines 32-35. Claims 1 and 2 have been amended to recite that the cleansing phase and said benefit phase are in physical contact within the package. Support for the amendment is found at page 1, lines 12-14 and page 2, lines 9-16 of the specification. Claims 1 and 2 have also been amended to recite the units for the Vaughan Solubility Parameter as $(\text{cal}/\text{cm}^3)^{0.5}$. Support for this amendment can be found in the article "Solubility, Effects in Product, Package, Penetration and Preservation", C. D. Vaughan, *Cosmetics and Toiletries*, Vol. 103, p 47-69, Oct. 1988, incorporated by reference within the specification. Claims 3-5, 8-25 and 17-18 have also been amended for clarity.

Claims 20-28 have been added. Support for claim 20 is found on page 6, lines 24-26. Support for claim 21 is found on page 8, lines 16-17. Support for claims 22 and 23 can be found on page 15, lines 31-33. Support for claims 24 and 25 can be found on page 25 line 11 to page 29, line 26. Support for claim 26 can be found on page 11, lines 1-2. Support for claim 27 can be found on page 25 line 11 to page 29, line 26.

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Double Patenting Rejection

Claims 1-19 have been provisionally rejected for obviousness-type double patenting over Claims 1-19 and 1-22 of U.S. Patent No. 6,673,755 and the commonly assigned, copending application U.S. Serial No. 10/699,469, respectively. Appropriate terminal disclaimers are submitted herewith this response. Therefore, the rejection is obviated.

Rejection Under 35 USC §102 Over Rattinger et al. 6,174,845 (hereinafter after referred to as "Rattinger")

Claims 1-19 are rejected under 35 USC § 102(b) as being anticipated by Rattinger. The Examiner states that Rattinger discloses a personal washing (cleansing) bar composition that comprises an emollient added to a base bar composition and forms stripes in the final bar composition. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Rattinger does not teach a striped personal care composition in a form selected from the group consisting of liquid, semi-liquid, cream, lotion, gel, and mixtures thereof. Instead, Rattinger relates to a "novel soap bar composition," (See Rattinger column 3, lines 24-25, respectively). Under § 102, anticipation requires that all the claim elements appear in a single prior art document. "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference" MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The Identical invention must be shown in as complete detail as is contained in the ... claim" MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989). Since Rattinger does not disclose each and every element of the present application, they cannot as a matter of law anticipate the present application. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

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Rejection Under 35 USC §102 Over Chambers et al. 5,612,307 (hereinafter referred to as "Chambers")

Claims 1-19 are rejected under 35 USC § 102(b) as being anticipated by Chambers. The Examiner states that Chambers discloses an aqueous composition that comprises a cleansing portion and a moisturizing portion, wherein the former comprises 1-35% surfactant, water thickener such as guar gum and the latter comprises an emollient that reads on the instant hydrophobic material. The Examiner states that the composition of Chambers upon dispensing forms individual stripes of benefit agent and surfactant formula. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Chambers does not teach a personal cleansing article that comprises a package containing a striped personal cleansing composition that comprises a cleansing phase and a benefit phase which are in physical contact within the package. Instead, Chambers teaches a liquid cleansing and moisturizing composition that comprises a surface active agent and a benefit agent wherein "the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition" (See Chambers column 1, lines 63-65). Under § 102, anticipation requires that all the claim elements appear in a single prior art document "A claim is anticipated only if each and every element set forth in the claim is found, either expressly or inherently described, in a single prior art reference" MPEP § 2131 citing *Verdegal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2D 1051, 1053 (Fed. Cir. 1987). "The identical invention must be shown in as complete detail as is contained in the ... claim" MPEP § 2131 citing *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2D 1913, 1920 (Fed. Cir. 1989). Since Chambers does not disclose each and every element of the present application, they cannot as a matter of law anticipate the present application. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

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Rejection Under 35 USC §103(a) Chambers

Claims 1-19 are rejected under 35 USC § 103(a) as being anticipated by Chambers. The Examiner states that Chambers fails to teach storing or packaging the composition in a transparent container or a container with instructions to hold the container upside down position. The Examiner states that Chambers teaches a formulation that is used for cleansing and in the absence of any unexpected advantage mere modification in the aesthetic design of the composition without affecting the mixing of the phases (benefit phase and base surfactant phase) and retaining the ability composition in stripes (desired by Chambers) would have been in the scope of a skilled artisan. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Chambers does not teach or suggest all of the claim limitations of Claims 1-19 and, therefore, does not establish a *prima facie* case of obviousness. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art" MPEP § 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Specifically, Chambers does not teach or suggest a personal cleansing article that comprises a package containing a striped personal cleansing composition that comprises a cleansing phase and a benefit phase which are in physical contact within the package. Instead, Chambers teaches a liquid cleansing and moisturizing composition that comprises a surface active agent and a benefit agent, wherein "the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition" (See Chambers column 1, lines 63-65).

Further, Chambers teaches away from a striped personal cleansing composition that comprises a cleansing phase and a benefit phase which are in physical contact within the package. A prior art reference may be considered as teaching away when "a person of ordinary skill, upon reading the reference, would be discouraged from following the path

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set out in the reference, or would be led in a direction divergent from the path taken from the Applicant,” *In re Gurley*, 27 F. 3d 51, 31 USPQ2d 1130, 1131 (Fed Cir. 1994). In reading Chambers, one of ordinary skill in the art would be discouraged from having a surfactant phase and benefit phase in physical contact within a package. In fact, Chambers further teaches “the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition” (See Chambers column 1, lines 63-65). Chambers states that the separation of the surfactant and benefit phase “avoids adverse interactions which may occur between these two components and resulting in ineffective deposition of the benefit agent” (See Chambers column 1, lines 65-67). Thus, taken as a whole one of skill in the art would not be motivated to having a surfactant phase and benefit phase in physical contact within a package by reading the disclosure of Chambers. Accordingly, Applicants submit that Claims 1-19 are nonobvious over Chambers. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

Rejection Under 35 USC §103(a) Chambers in view of Frantz, et al (hereinafter referred to as “Frantz”)

Claims 1-19 are rejected under 35 USC § 103(a) as being anticipated by Chambers in view of Frantz. The Examiner states that Chambers fails to teach the claimed composition with the cleansing phase containing an alkanolamide, wherein the phase is non-Newtonian shear thinning with a viscosity of equal to or greater than 3000 cps. The Examiner states that Frantz teaches a stable surfactant composition for suspending components in a composition. The Examiner states that the surfactant containing suspending formulations comprises an anionic surfactant, water, electrolyte and an alkanolamide or imparting a free-flowing non-Newtonian shear thinning property to the composition. The Examiner concludes that it would have been obvious to one of ordinary skill in the art at the time the instant invention was made to employ the alkanolamide of Frantz in the cleaning phase of Chambers because Frantz suggest that the suspending phase comprises alkanolamide in addition to anionic surfactant, water and an

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electrolyte to impart a free-flowing and non-Newtonian shear thinning property that provides the ability to suspend components. "benefit agents" such as oils, skin care agents. The Examiner further concludes that a skilled artisan would have expected to achieve a free-flowing cleansing phase with non-Newtonian shear thinning. Applicants respectfully traverse this rejection based on the amendment and remarks contained herein.

Chambers in view of Frantz does not teach or suggest all of the claim limitations of Claims 1-19 and, therefore, does not establish a *prima facie* case of obviousness. "To establish *prima facie* obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art." MPEP § 2143.03 citing *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). "All words in a claim must be considered in judging the patentability of that claim against the prior art." MPEP § 2143.03 citing *In re Wilson*, 424 F.2d 1382, 1385, 165 USPQ 494, 496 (CCPA 1970). Specifically, Chambers does not teach or suggest a personal cleansing article that comprises a package containing a striped personal cleansing composition that comprises a cleansing phase and a benefit phase which are in physical contact within the package. Instead, Chambers teaches a liquid cleansing and moisturizing composition that comprises a surface active agent and a benefit agent. wherein "the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition" (See Chambers column 1, lines 63-65).

Further, Chambers teaches away from a striped personal cleansing composition that comprises a cleansing phase and a benefit phase which are in physical contact within the package. A prior art reference may be considered as teaching away when "a person of ordinary skill, upon reading the reference, would be discouraged from following the path set out in the reference, or would be led in a direction divergent from the path taken from the Applicant," *In re Gurley*, 27 F. 3d 51, 31 USPQ2d 1130, 1131 (Fed Cir. 1994). In reading Chambers, one of ordinary skill in the art would be discouraged from having a surfactant phase and benefit phase in physical contact within a package. In fact, Chambers further teaches "the surface active agent and benefit agent are separated in the composition, i.e. they do not directly contact one another in the composition" (See

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Chambers column 1, lines 63-65). Chambers states that the separation of the surfactant and benefit phase "avoids adverse interactions which may occur between these two components and resulting in ineffective deposition of the benefit agent" (See Chambers column 1, lines 65-67). Thus, taken as a whole one of skill in the art would not be motivated to having a surfactant phase and benefit phase in physical contact within a package by reading the disclosure of Chambers. Accordingly, Applicants submit that Claims 1-19 are nonobvious over Chambers in view of Frantz. Therefore, the Applicants respectfully request withdrawal of the rejection on this basis.

Conclusion

This response represents an earnest effort to place the present application in proper form and to distinguish the invention as claimed from the applied reference(s). In view of the foregoing, entry of the amendment(s) presented herein, reconsideration of this application, and allowance of the pending claim(s) are respectfully requested.

Respectfully submitted,

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